

## APPEAL NO. 93464

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on May 10, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) had shown by a preponderance of evidence that he had good cause to miss doctors' appointments after June 22, 1992, scheduled for him and that he has not otherwise abandoned medical treatment, and that therefore, the appellant (carrier) was not authorized to suspend temporary income benefits (TIBS) on such basis. Carrier appeals urging that the evidence establishes that the claimant abandoned medical treatment without good cause. Claimant asks that the decision be affirmed.

## DECISION

Finding that there is a need for development of evidence and further consideration to enable an informed and meaningful review of this case, we reverse and remand.

The single issue in this case was whether the claimant abandoned medical treatment without good cause such as to authorize suspension of benefits under Rule 130.4. Following a benefit review conference (BRC) on this issue, the benefit review officer issued an interlocutory order suspending the carrier's obligation to pay TIBS. There was no dispute that the claimant sustained a compensable injury on (date of injury), when a lid of a dumpster hit him on the head. The evidence is not well developed and the medical records offered at the contested case hearing are not clear as to the course of treatment; however, the claimant indicated that the injury did not break any skin but that he felt dizzy and unsteady. He has not worked since. He apparently (according to a note in a Rehabilitation Progress Report put in evidence by the carrier) went to a doctor and was told to take three days off and when he returned to work he was terminated. Neither the documentary evidence nor the testimony of the claimant establish how much treatment or exactly when such treatment was missed or not undertaken by the claimant. There is evidence that he was under the care of a psychiatrist for an extended period of time because he developed symptoms of "hearing voices." The carrier asserts that the claimant stopped seeing any doctor from late June 1992 until March 1993; however, the evidence is unclear and somewhat contradictory regarding this critical matter. There is a reference in one of the Rehabilitation Progress Reports offered by the carrier that indicates the claimant had missed an appointment or some appointments with one of his doctors but there is nothing more specific than that and no evidence that appointments were sequentially missed or rescheduled. There are no medical reports nor other documents from any of the health care providers to shed light on the "abandonment of treatment" issue. In any event, the claimant testified that he had not abandoned medical treatment, that he had missed some appointments because he was under medication from one of his doctors, a psychiatrist, who had put him on several medications that caused him to sleep a lot, slowed his "whole coordination," made him forget things, and that sometimes he was "so hepped up I couldn't move." He also stated that sometimes the appointments were changed because the doctor was not going to be there and that he did not always get messages timely because he lived

in a boarding house and the landlord would just leave written messages near the phone. He also said that sometimes he forgot to write down messages when he got a phone call. There was evidence that the claimant was able to attend other regularly scheduled events during this same time frame. When asked on cross-examination whether he received any medical treatment between June 1992 and March 1993, the claimant stated "that's too far for me to remember" but indicated that he had gotten his prescriptions refilled during that time and that he had to go to the doctor for that. The records also show that he saw another doctor during this time frame and he testified that he saw his original psychiatrist in December 1992 and had seen the doctor "this year" (1993).

Medical evidence offered by the claimant, an "Independent Medical Evaluation" from an organization called Neurobehavioral Associates dated August 3, 1992, does not mention anything germane to missed appointments or abandonment of treatment; however, the report contains an impression that is basically negative regarding any neurological deficits and states "organic thought disorder, primary psychiatric, unrelated to trauma of 10/18/91." Notations in the Rehabilitation Progress Reports from an organization called General Rehabilitation Services, Inc. offered into evidence by the carrier suggest missed appointments by the claimant indicating his psychiatrist "would see him if he would make his appointments or at least notify the office when he could not make it" and mentioned another appointment with a different doctor for "12/16/92." One of the reports also states that the claimant related to one of the doctors that under workers' compensation he had two years before he needed to return to work.

The hearing officer took official notice of the 1992 Physician's Desk Reference and noted that three of the medications that the claimant was prescribed had potential side effects or adverse reactions which included drowsiness, depression, disorientation, confusion, weakness, and that high doses of one of the medications could result in transient visual hallucinations. Among the findings made by the hearing officer were the following:

[Claimant] was medicated in December 1992, such that remembering dates and functioning to attend to the ordinary business of attending doctors' appointments was sufficiently impaired that he did not wilfully fail to attend appointments.

[Claimant] may not have been adequately informed of doctor's appointments scheduled for him by the carrier, or rescheduled by the doctor's officer.

[Claimant] had good cause to miss appointments with doctors that were scheduled after 22 June 1992.

[Claimant] did not voluntarily abandon medical treatment at any time.

Rule 130.4 of the Texas Workers' Compensation Commission (Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.4) is entitled "Presumption that Maximum Medical Improvement has been Reached and Resolution when MMI has not been Certified." The rule does not establish conditions when MMI is presumptively reached, but rather sets up a procedure to follow when certain conditions are met to proceed to a resolution of MMI. Texas Workers' Compensation Commission Appeal No. 92389, decided September 16, 1992. One condition is when it appears that the employee has failed to attend two or more consecutively scheduled health care appointments (§ 130.4(c)) after which the carrier may go through the procedure to request a BRC. Under § 130.4(n) the benefit review officer shall enter an interlocutory order directing the insurance carrier to suspend temporary income benefits, and begin payment of impairment income benefits, if any, if the benefit review officer's recommendation states that: "(3) the employee has missed two or more consecutively scheduled health care appointments or has otherwise abandoned treatment without good cause." (The carrier apparently followed the procedures outlined in the rule as an interlocutory order to suspend payment of temporary income benefits was issued by a benefit review officer). The rule does not embrace the terms "wilfully" or "voluntarily" although such factors might well be considered in a "good cause" determination. What is troubling in this case is the apparent determination by the hearing officer that the claimant must have sustained potential side effects from medications and that such established good cause for either missing consecutive appointments or abandoning medical treatment. There is no medical evidence concerning the dosage, frequency, effect, or duration concerning the claimant. For that matter, there is evidence that the claimant did not take the medication for periods of time during the period in question. We believe it is little more than speculation that a potential side effect mentioned in the Physician's Desk Reference caused the claimant's condition to be such that he was effectively relieved of attending appointments or following medical treatment. Good cause is generally regarded as that degree of diligence that an ordinarily prudent person would follow under the circumstances. Hawkins v. Safety Casualty Co., 207 S.W.2d 370 (Tex. 1948); Texas Workers' Compensation Commission Appeal No. 92222, decided July 15, 1992. Without medical evidence to show the particulars involving the medications the claimant states he was prescribed and the medical effects on him, it is not possible to definitively assess whether the claimant took reasonable action or that in spite of his reasonable actions, he was not able to attend his appointments or follow medical treatment. As indicated, it appears the hearing officer concluded that the claimant came within the missed medical treatment or abandonment of medical treatment provisions of Rule 130.4 but determined he had good cause because of medication. Good cause aside, we do not find probative evidence that appointments were necessarily missed consecutively nor that abandonment necessarily occurred.

For the above reasons, the decision is reversed and the case remanded for development of evidence and further consideration pursuant to Article 8308-6.42(b)(3).

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Article 8308-5.41. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

---

Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

---

Thomas A. Knapp  
Appeals Judge

---

Gary L. Kilgore  
Appeals Judge